

## ANSWER AND AFFIRMATIVE DEFENSES

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#### **IV FIRST AFFIRMATIVE DEFENSE**

##### **Failure to State a Claim for Relief**

4. Plaintiffs have failed to state a claim upon which relief could be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **Ambiguity**

5. The terms of any alleged contract entered into between the parties are ambiguous and there has been no breach of contract by defendants, James and Judith Johnston. (hereinafter "Johnstons")

#### **THIRD AFFIRMATIVE DEFENSE**

6. As a third, separate, and affirmative defense to the unverified Complaint on file herein, Defendants Johnstons are informed and believe, and on such information and belief, allege that by reason of Plaintiffs' conduct which constitutes a breach of contract, tortious conduct, waiver, unclean hands, and laches, Plaintiffs are estopped to assert any right of relief

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **Breach of Contract**

7. As a seventh, separate, and affirmative defense to the unverified Complaint on file herein, Defendants Johnstons are informed and believe, and on such information and belief, allege that Plaintiffs breached their contract, if any, with Defendants and by reason of such breach of contract, Defendants Johnstons have been excused of any duty it may have had to perform any obligation set forth in any agreement with Plaintiffs, if there be such an agreement.

### **FIFTH AFFIRMATIVE DEFENSE**

#### **Waiver**

8. As a fifth, separate, and affirmative defense to the unverified Complaint on file herein, Defendants Johnstons are informed and believe, and on such information and belief, allege that Plaintiffs engaged in conduct that constitutes waiver of their rights, including, but not limited to breach of contract and breach of implied duty of habitability of premises. By reason of such waiver, Defendants Johnston are excused from the performance of the obligation of the alleged contract.

### **SIXTH AFFIRMATIVE DEFENSE**

#### **Unconscionability**

9. As a sixth, separate, and affirmative defense to the unverified Complaint on file herein, Defendants Johnstons allege that the agreement, if any, was unconscionable.

### **SEVENTH AFFIRMATIVE DEFENSE**

#### **Lack of Consideration**

10. As a Seventh, separate, and affirmative defense to the unverified Complaint on file herein Defendants Johnstons alleged that the agreement or act required of them or requesting they refrain from acting when they had a legal right to do so, lacked consideration.

### **EIGHTH AFFIRMATIVE DEFENSE**

#### **Fraud/Misrepresentation**

11. As an Eighth, separate, and affirmative defense to the unverified Complaint on file herein Defendants Johnstons alleged that Plaintiffs fraudulently misrepresented the condition of the premises in order to induce them to enter into an agreement. By reason of such fraud or

misrepresentation, Defendants Johnstons are excused from the performance of the obligation of the alleged contract.

#### **NINTH AFFIRMATIVE DEFENSE**

##### **Full Performance**

12. As an Ninth, separate and affirmative defense to the unverified complaint, Defendants Johnstons allege that their full performance of any agreement or act required of it, if there be such agreements or acts, fulfills all its duties and obligations to Plaintiffs, if any there be, contractual, fiduciary, or other, and no other duty or obligation to Plaintiffs remains on behalf of these Defendants.

#### **TENTH AFFIRMATIVE DEFENSE**

##### **Failure to Mitigate**

13. As a Tenth, separate, and affirmative defense to the unverified Complaint on file herein Defendants Johnstons allege that at all times material herein, Plaintiffs failed and neglected to mitigate their damages so as to reduce and/or diminish their claim.

#### **PRAYER**

WHEREFORE, having fully answered plaintiff's Complaint, defendant prays for the following relief:

1. A judgment dismissing plaintiff's complaint with prejudice.
2. Costs and Disbursement incurred herein;
3. Any other relief which the Court deems just and proper.

Respectfully Submitted this 9th day of April, 2015.

By James M. Johnston  
James M. Johnston, Defendant  
1025 Pinecrest Terr, Ashland, OR 97520  
(503) 482-5556

By Judith Johnston  
Judith Johnston, Defendant  
1025 Pinecrest Terr, Ashland, OR 97520  
(503) 482-5556

CERTIFICATE OF SERVICE

We, hereby certify that on the 10<sup>th</sup> day of April, 2015, we deposited true copy of the  
ANSWER AND AFFIRMATIVE DEFENSES in first class mail to the following:

CLAUDE GALLAND  
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JOSEPH E. DONAT, Esq.  
Herzfeld & Rubin, PC  
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New York, NY 10004

By <u>James M. Johnston</u>	By <u>Judith Johnston</u>
James M. Johnston	Judith Johnston
1025 Pinecrest Terrace	1025 Pinecrest Terrace
Ashland, OR 97520	Ashland, OR 97520
(503) 482-5556	(503) 482-5556

United States District Court of the Southern District of New York

Attn: Pro Se Intake Unit

Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Rm 200  
New York, New York 10007

Pro Se Intake Clerk: *Re: Case No. 14 CV 4411*

The enclosed must be filed by MONDAY, APRIL, 13, 2015

Thank you,



Judith E. Johnston  
Defendent: Galland vs Johnston

*Cell no. 541-944-5068*

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ATTN: Pro Se Intake Clerk

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